IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5396 OF 2004

Smt. Indubai Raghuveer Ingale,
since deceased through L.Rs.
1a. Arun Raghuveer Ingale & Ors. .... Petitioners
Vs.
Dr. Shamrao Balkrishna Sangale
& Anr. .... Respondents

Ms S.A. Mudbidri for the Petitioners.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 20, 2004

P.C:

1. Heard the learned Advocate for the petitioners. Perused the records.

2. The petitioners challenge the concurrent findings of the Courts below on the point of failure to pay the arrears of rent inspite of proper service of notice demanding the same. The only ground of challenge in the petition is that the respondent-landlord failed to serve the notice on the petitioners and all other heirs of the original tenant and served the notice only on the defendant No.1 who was one of the sons of the original tenant. Both the Courts below have arrived at the concurrent findings about the lease of the said premises, after the death of the original tenant, being

continued only in favour of the defendant No.1 for last about 15 years and undisputedly the statutory notice demanding the arrears of rent was served upon the defendant No.1 and yet there was failure to comply with the requirement of law and consequently the suit for eviction was filed and it was decreed and the lower Appellate Court has confirmed the decree. Though it was sought to be contended that all the heirs of the original tenant as well as the petitioner, who is the widow of the original tenant, continued to be the member of the joint family after the death of the original tenant, neither there are specific pleadings in that regard nor a specific ground in that respect was taken before the Appellate Court. Grievance was sought to be made about the failure on the part of the Court below to frame necessary issue in that regard. However, there are no pleadings disclosed requiring any issue in that regard. On the contrary, the Courts below had framed specific issue as to whether the plaintiff proves that the defendant No.1 is a tenant and defaulter of rent and the same has been answered in the affirmative on analysis of the evidence on record. The analysis of the evidence on record being in proper perspective and there being no specific plea raised by the petitioners as is now sought to be contended in the petition, either before the trial Court or even at the appellate stage, it is too late for the petitioners to seek assistance of

this Court to non-suit the respondent-landlord on the grounds which were neither raised nor factual foundation for raising such grounds had been laid before the Courts below.

3. Since the judgments impugned do not disclose any illegality, there is no case for interference in writ jurisdiction. The petition therefore is rejected.

4. At the oral request of the learned Advocate for the petitioners, time to vacate the premises is extended till 31-1-2005, subject to that the petitioners along with all the major persons residing with them should file undertaking before the Registrar (Judl.) of this Court assuring that they will deliver the vacant and peaceful possession of the suit premises on or before 31-1-2005 to the respondent-landlord and will not induct any third person therein nor will create any third party interest therein till then. The undertaking to be filed within three weeks. The failure to file the undertaking will automatically result in vacating the order granting the extension of time.

5. Parties may be issued the authenticated copy of this order.